IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2750 OF 2004

Shri S.V. Chheda
and anr. ...Petitioners.

V/s

State of Maharashtra
and Anr. ...Respondents.

Mr. S.V. Marwadi for the petitioners.
Mr. G. Krishna Mohan Nair for respondent No.2.
Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 6th April, 2005

P.C.:

1. Heard the learned counsel for the petitioners and the learned counsel for respondent No.2.

2. Petitioners are challenging the issuance of process by the Metropolitan Magistrate, 8th Court, Esplanade, Bombay in a complaint filed by respondent No.2 under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned Counsel appearing on behalf of the petitioners that the demand notice which was issued by the complainant was contrary to the provisions of section 138(b) of the Negotiable Instruments Act. It is submitted that the cheque in

question was for the payment of an amount of dishonoured cheque i.e. of Rs 49,764/-. However, in the notice an exorbitant amount of Rs 5,06,386/- was demanded. It is submitted that therefore the statutory notice was contrary to the provisions of section 138(b) since it was a consolidated demand notice. In support of his submissions, the learned counsel for the petitioners relied upon the judgment of the Supreme Court in the case of K.R. Indira Vs. G. Adinarayana reported in 2004 Criminal Law Journal 5 and also upon the judgment of the Supreme Court in the case of Suman Sethi Vs. Ajay K. Churiwal reported in 2000 ALL MR (Cri) 645.

4. Respondent No.2 has filed an affidavit in reply. In para 4 of the affidavit in reply, it is stated that respondent No.2 had not pressed for issuance of process under section 420 since the petitioners were willing to settle the matter out of Court. It is submitted that instead of settling the matter, the petitioners filed Petition for quashing the complaint in the High Court. It is further submitted that the petitioners had given reply to the notice of respondent No.2 - Company and had admitted its liability. In the reply, it is further stated that though there are other Directors of the petitioner

No.2 - Company, the complainant had not impleaded all the Directors in the case and it was only filed against Shri S.V. Chheda - petitioner No.1 and the Company - petitioner No.2. The submission made on behalf of respondent No.2 that the petitioners had accepted their liability in the reply and that only petitioner No.1 was made an accused though there were other Directors, will have to be accepted.

5. It is not possible to accept the said submissions made by the learned Counsel appearing on behalf of the petitioners. In the present case, statutory notice indicates that the attention was drawn of the accused to the fact that material was supplied from time to time and in the Invoice Number date and the amount of Bill was mentioned in para 1 of the notice. In para 2, however, there is a specific averment that after the cheque No.438493 dated 11/1/2003 for an amount of Rs 49764.00 against Bill No.DR/125215 was presented, the said cheque was dishonoured and, thereafter, in the last paragraph the entire amount due from the Invoices mentioned in para 1 including the Invoice No. DR/125215 21/10/2002 for an amount of Rs 49,764.00 was demanded. Thus, it cannot be said that the demand was consolidated demand. The complainant had given specific particulars about the dishonour of cheque in

para 2 of the demand notice and this amount was included in the total amount due and payable for the other Invoices. Thus the ratio in Suman Sethi's case (supra) is not applicable to the facts of the present case. In Suman Sethi's case the Supreme Court has, in fact, held that if in addition to the payment of the cheque amount further demands are also made then merely on that count notice in question would not become invalid. In the case of K.R. Indira (supra), the facts were different. In the said case, consolidated notice of demand for dishonour of four cheques was given and the contents of the notice in question showed that not only cheque amounts were different from the alleged loan amounts but demand was made not of the cheque amounts but only the loan amount. In these circumstances, the Supreme Court in the case of K.R. Indira (supra) held that the notice was invalid. The facts in the present case are different and, therefore, ratio in the said judgment in the case of K.R. Indira is not applicable to the facts of the present case.

6. It is further submitted by the learned Counsel appearing on behalf of the Petitioners that there were no averments in the complaint regarding the role played by the petitioners and on that count also it is

submitted that process was liable to be quashed. This submission also cannot be accepted. In the complaint in para 3 it is stated that the accused in discharge of their liability have issued a cheque dated 11/1/2003 for Rs 49,764/- which was dishonoured after it was deposited. Further, in the complaint in para 8 it is stated that the accused had issued the cheque with an intention not to honour the same when presented for realization and, therefore, the accused had committed an offence punishable under section 138 of the Negotiable Instruments Act and 420 of the Indian Penal Code and, therefore, the process was issued. In my view, all these questions raised by the petitioners cannot be decided at this stage and there is no reason to interfere with the order of issuance of process.

7. Writ Petition is accordingly dismissed.

V.M. KANADE, J.